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Religion at work: state high court to weigh in

Are Washington employers obligated, under the state law, to accommodate the religious beliefs of their employees — freeing them from religious holiday shifts or allowing them to pray while on the job? It's an unanswered legal question that the state Supreme Court may now finally address.

By Lornet Turnbull

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Are Washington employers obligated to accommodate their employees' religious practices — giving days off for holidays, for example, or allowing time to to pray during work hours?

On Tuesday, the Washington Supreme Court will hear arguments in a case closely watched by legal groups not so much for its merits but for the precedent it could set in finally clarifying the state's discrimination law.

The lawsuit before them was brought by four employees of Gate Gourmet, an international company that prepares food for airline passengers, and which, for security reasons, prohibits its workers from bringing their own meals to work.

The four men — vegetarian, Orthodox Christian, Muslim and Hindu — say the meals the company had been serving during the workers' shifts led them unknowingly to eat pork and other foods in conflict with their religious and moral beliefs.

Asegedew Gefe, one of the plaintiffs, is an Orthodox Christian who has been working at Gate's warehouse at Seattle-Tacoma International Airport since 2010.

"We're not asking for this or that," he said. "If it's broccoli, tell us it's broccoli. If it's pork tell us pork."

But does the company have to?

While it is illegal under state law to fire or refuse to hire someone because of his creed, defined as a system of religious beliefs, the law is less clear — and some say silent, even — on whether employers must accommodate religious practices in the workplace, at a time when employees are increasingly asserting their religious identities at work.

Some say the protection is implicit in state law.

“Failure to recognize a religious discrimination claim under (state law) would leave a gaping hole in the coverage made available by the statute,” the ACLU of Washington and the Washington Employment Lawyers Association wrote in a brief filed with the Supreme Court.

A year ago, King County Superior Court Judge Mary Yu granted Gate’s request to dismiss the workers’ lawsuit, saying state law does not require employers to accommodate religious practices.

Yu wrote that her order was based on a state Court of Appeals decision in an earlier case in which a devout Christian woman sued the Battle Ground School District in Clark County for religious accommodation, saying her supervisor told her to relay false information to another employee against her religious beliefs.

The appeals-court judges dismissed that case, concluding that the high court, the Legislature and Human Rights Commission, which enforces the state anti-discrimination law, had never formally recognized religious accommodation under state law.

Some believe the Supreme Court agreed to take the Gate case in part because of its importance.

Justices this session are also weighing a separate aspect of the anti-discrimination law in another case.

In May, they heard arguments on whether the exemption granted in the law to religious organizations — from churches to universities to hospitals — is in conflict with the state constitution.

High court rulings in both cases would guide lower courts in deciding such lawsuits in the future.

Specifically, a decision in the accommodation case could shift some lawsuits from federal to state court, set the standard for the accommodation employers must make and allow workers to sue smaller employers — those with eight workers versus those with 25 as required in federal cases.

“This law has been around since 1949; it’s hard to imagine the issue is only now being addressed,” said attorney George M. Ahrend, who wrote an amicus, or friend-of-the-court, brief for the Washington State Association for Justice Foundation.

“Citizens shouldn’t have to rely on federal law for protection.”

Attorneys for the company, which employs about 130 workers at Sea-Tac, wrote in an email that Gate "takes its legal obligations very seriously, including those that are designed to protect the rights of its employees."

They declined to comment further, citing the upcoming Supreme Court arguments.

Aaron Rocke, attorney for the Gate workers, said religious accommodation is implicit in state law.

"The primary legal issue in this appeal is an important matter of civil rights that helps define Washington state as either with the mainstream in protecting civil rights and respecting religion, or a fringe haven for intolerance," Rocke said.

While low in numbers, religious-based workplace complaints to both the state and federal governments have been on the rise since the Sept. 11, 2001, terrorist attacks.

And a poll this year by the Tanenbaum Center for Interreligious Understanding in New York found the most common religious-based conflicts involved being required to work on a religious holiday or attending company events where foods were not halal, kosher or vegetarian.

State vs. Federal

The Legislature passed the state law barring discrimination in employment and other areas based on a person's race, religion and other characteristics 15 years before the Civil Rights Act of 1964 enshrined such rights at the federal level.

But while the federal law, applicable to private employers, was later amended and regulations established to provide for "reasonable" religious accommodations in the workplace, the Washington statute was not.

In a 1992 ruling, the state Supreme Court noted that whether state law may "implicitly require accommodation is an important and complex question that we have not previously been asked to decide."

Laura Lindstrand, policy analyst for the Human Rights Commission, said there was never a legal question around religious accommodation until last year's ruling in the Battle Ground case.

State law was liberally and broadly construed, as the Legislature intended, to require employers to make "reasonable" religious accommodations for their workers, she said.

While it has not written regulations, the commission has published guidelines around such protections and has investigated such complaints and made determinations on cases, with the understanding that such protection exists, whether under state law, or by extension under federal law, Lindstrand said.

“We didn’t think it was an issue; we were not concerned about the lack of specific language in the law.”

Still, she said, if she were an attorney representing clients in an employment-discrimination case, she’d file it in federal rather than state court.

And that’s precisely what most attorneys in this state say they do.

Hardeep Rekhi, a Seattle attorney, recently got a default judgment in a lawsuit he filed on behalf of a Muslim man fired from his job as a security guard after he refused to shave his beard, which he wears closely cropped in keeping with his religion.

Rekhi said he filed in federal rather than state court, because he recognized a lack of clarity in state law.

In 2005, Red Robin Gourmet Burgers settled a federal lawsuit brought by a server in its Bellevue restaurant who was fired for refusing to cover up wrist tattoos he said were part of his ancient Egyptian Kemetic faith.

Rocke, who plans to seek class-action status, said he proceeded in state court with the Gate suit long before the decision in the Battle Ground case, believing state law protected his clients.

“Our position is that Washington, just like both the U.S. government and a majority of the states, require employers to reasonably accommodate religion in the workplace,” he said.

There have been similar religious-accommodation cases across the country.

Gate’s policy prohibiting workers from bringing meals is based in part on federal security measures.

Gefe said that when Gate hired him three years ago, he had not given particular thought to the meals the company would provide.

On several occasions, Gefe said he and his co-workers ate pork, when they thought they were eating beef or chicken.

While the workers, represented by the Hotel Employees and Restaurant Employees Union (Unite HERE), could have sought a remedy through their union, a spokeswoman said it's also their prerogative to sue.

According to the suit, after a co-worker brought the issue to the company's attention, Gate began serving meatballs made from turkey, but later reversed that move without telling the workers.

Union officials said the company is now labeling the workers' meals, but Rocke said it's "not reliable or consistent."

In addition to damages, the plaintiffs also are seeking payment for medical testing and religious cleansing or purification and paid time off to do it.

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